

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (the "Agreement"), made and entered into as of this 7th day of June, 1993, by and between the ECONOMIC DEVELOPMENT AND INDUSTRIAL CORPORATION OF BOSTON, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts, having its principal place of business at 43 Hawkins Street, Boston, Massachusetts 02114 (the "EDIC"), and the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts, having its principal place of business at Room 900, City Hall, Boston, Massachusetts 02201 (the "BRA"). Collectively, EDIC and the BRA shall hereinafter be referred to as the "Parties."

RECITALS

WHEREAS, "The Boston Advantage," the Walsh Commission Report dated April, 1993, includes a number of recommendations aimed at ensuring a stronger, more vibrant economic future for the City of Boston; and

WHEREAS, a specific recommendation of the Walsh Commission is to restructure the City's economic development agencies to better implement the City's economic development strategy; and

WHEREAS, the EDIC is organized pursuant to St. 1971, c.1097 ("Chapter 1097") for the purposes of redeveloping blighted open and decadent industrial areas within the City of Boston, Massachusetts; and

WHEREAS, in furtherance of the foregoing purposes, the EDIC has engaged in certain activities permitted under Chapter 1097, including but not limited to the issuance of bonds and the acquisition, development, leasing and management of properties, funds and revenues in connection with such bonds and other activities; and

WHEREAS, the EDIC is specifically empowered by section 5(r) of said Chapter 1097 to make management agreements and is further empowered to do all acts and things necessary or convenient to carry out the powers granted by Chapter 1097; and

WHEREAS, the BRA is a duly organized redevelopment authority in the City of Boston with the powers and functions of both an operating agency and an urban renewal agency under Chapter 121B of the Massachusetts General Laws; and

WHEREAS, the BRA has such other powers and functions conferred under the St.1960, c.652, including but not limited to those of the planning board of the City of Boston; and

WHEREAS, the BRA is empowered to enter into, execute and carry out contracts and all other instruments necessary or convenient to the exercise of its powers; and

WHEREAS, the EDIC is desirous of securing management support for its projects, and staff and professional services from BRA for the operation of EDIC's projects including but not limited to servicing the EDIC's non-financial obligations under existing bonds and contracts, the operation of the EDIC's facilities and in fostering economic development in the City of Boston; and

WHEREAS, the BRA is willing to provide its staff, facilities and other non-financial resources to EDIC, on terms and conditions acceptable to EDIC and the BRA, to enable EDIC to manage its projects under the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants hereinafter contained, the parties hereto covenant and agree as follows:

ARTICLE I

AGREEMENT TERMS

1.1 Initial Term. This Agreement shall commence upon execution, and shall terminate three years from the date hereof unless terminated earlier under the provisions of Section 1.3 below.

1.2 Renewal Term. This Agreement shall be automatically renewed from year to year for additional one (1) year terms, commencing on the date of expiration of the Initial Term and each successive Renewal Term, unless sooner terminated by either party by vote of its board in accordance with Section 1.3 below.

1.3 Termination. This Agreement may be terminated without cause, by vote of the board of either party and upon thirty (30) days prior written notice to the other party; provided, however, that no such termination shall be effective until 60 days following such vote. Said notice may be waived by the mutual written consent of the parties hereto.

ARTICLE II

SCOPE OF SERVICES

2.1 The EDIC hereby agrees that the BRA shall take all actions necessary to manage any and all projects undertaken or to be undertaken by the EDIC during the term of this Agreement, and the EDIC hereby expressly intends that all management responsibilities hitherto undertaken by the EDIC are transferred to and shall henceforth reside in the BRA for each and every project under its lawful control.

2.2 Staff. The BRA shall provide staff for the management, administration, operation and implementation of the programs and functions of all projects of the EDIC, including, without limitation, all projects specifically set forth on Exhibit A hereto. The BRA shall perform all administrative and operational duties for which the EDIC is responsible under Chapter 1097, including the EDIC's administrative and operational responsibilities with respect to all of its assets and liabilities, income and expenses, real property owned or leased by the EDIC and the EDIC's non-financial responsibilities with respect to outstanding bond issues; provided, however, the BRA shall not have any authority to issue any bonds under Chapter 1097, and the BRA shall have no authority, without the prior written consent of the EDIC, to sell or encumber any assets of the EDIC or to borrow funds in the name of the EDIC.

It is expressly understood and agreed that, in order to execute this Agreement, all EDIC personnel, shall hereafter

NUFD wants
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responsibility

report to and be responsible to the BRA which shall be solely responsible for all management functions of all EDIC projects during the term of this Agreement; provided, however, that the BRA shall report to the members of the corporation of EDIC as provided in Article II, Section 2.5 herein.

2.3 Administrative Services. The BRA, by and through the use of either BRA or EDIC employees as it determines in its sole discretion, shall provide all managerial, administrative, secretarial, word processing, and bookkeeping services to the EDIC required for the management of all EDIC projects existing or created during the term of this Agreement.

2.4 Professional Services. The BRA, by and through the use of either BRA or EDIC employees as it determines in its sole discretion, shall furnish all financial, management, accounting, legal and other professional services necessary for the management of any and all EDIC projects.

2.5 Reports. The EDIC, through its director, has provided the BRA with a list of all reports the EDIC is required by law or otherwise to prepare, attached hereto as Exhibit B. It is agreed that for the duration of this Agreement it shall be the responsibility of the BRA to prepare and furnish such reports. The BRA shall report directly to the members of the corporation of the EDIC from time to time, shall prepare all agendas and votes necessary or convenient for the EDIC meetings, and shall, through BRA or EDIC employees as the case may be, faithfully manage all EDIC projects pursuant to this Agreement.

2.6 Community Development Funds. If and to the extent the EDIC is, or in connection with prospective programs during the term of this Agreement shall be, an applicant for funding administered by the United States, the Commonwealth of Massachusetts or any instrumentality thereof, the BRA shall in all respects act as the sole and exclusive agent of the EDIC.

2.7 EDIC Facilities. The BRA shall provide a suitable meeting room for EDIC meetings. The EDIC shall make available to the BRA all its property, office space, furnishings, file cabinets and equipment, and all such EDIC property shall be under the exclusive and sole control of the BRA for the purpose of executing this Agreement. The BRA reserves the right to move EDIC employees to office space under its control and EDIC agrees to terminate any existing space leases as determined by the BRA to the extent permitted by such leases.

2.8 EDIC Employees. It is expressly understood that in executing the administrative and operational duties of EDIC for the purpose of managing its projects hereunder, the BRA shall direct EDIC employees as it determines in its sole discretion; provided, however, that the BRA shall have no authority to recommend the layoff of such EDIC employees until the close of EDIC fiscal year 1994 and shall not recommend the termination of such EDIC employees except for cause. From and after the date hereof, EDIC shall not hire any additional employees without prior BRA consent. In no event shall current or future EDIC employees be considered or deemed in any respect to be BRA

employees, permanent or otherwise; provided, however, the BRA may hire in its sole discretion any of the current EDIC employees on terms at a minimum equivalent to their then compensation and benefits. The BRA shall have the right to recommend termination for cause of any EDIC employees to the EDIC board. All EDIC employees from and after the date hereof shall report to and be directed by the Director of the BRA. The BRA shall assign one secretary to the current Director of EDIC.

2.9 Signature Authority; Depositories; Investment Decisions.

The EDIC hereby assigns signature authority for all bank accounts, certificates of deposit and any and all other financial instruments and payrolls to the director of the BRA and expressly assigns signature authority for the purpose of executing any contract or other document necessary or convenient for the purpose of managing EDIC projects. Any and all signature authority hitherto existing or delegated to the director of EDIC is hereby revoked. From and after the date hereof, the BRA shall have the right to determine and may change the depositories for any and all EDIC bank accounts and shall have the right to determine or direct the interim investment of the funds in such accounts, except for such accounts or investments that are mandated or required by existing EDIC contracts. Notwithstanding the foregoing, all bank accounts must be fully insured and all monies must be invested or reinvested in only either certificates of deposit or FDIC

insured money market accounts, unless otherwise consented to by EDIC.

ARTICLE III

COMPENSATION

3.1 Consideration. The consideration supporting this Agreement shall be the mutual obligations contained herein and shall not include monetary consideration, except as otherwise provided herein.

3.2 Fees. In consideration of the services provided in accordance with Article II hereof, the EDIC, subject to its board approval, shall pay to BRA a reasonable fee based upon the time spent by BRA employees to manage EDIC projects. Said fee shall be no less than the amount required to cover the costs incurred by BRA during the term of this Agreement for the provision of services to the EDIC in accordance with Article II hereof, including the cost of BRA employees required in Section 2.8 hereof, the cost of organizational expenses of BRA, and all funds necessary for the execution of this Agreement. EDIC shall advance to BRA, upon the execution of this Agreement, the fee necessary for the initial sixty (60) day term of this Agreement. Thereafter, the fees due and owing shall be paid monthly, due on the first day of each month in advance, or at such other times and dates as the Parties may in writing agree.

ARTICLE IV

INDEMNIFICATION

4.1 Indemnification. EDIC agrees to indemnify and ^{and} save the BRA and its officers and employees harmless from all loss, damage, liability and expense (including reasonable attorneys fees), relating to any act of the BRA, its officers or employees taken on behalf of EDIC. Nothing contained herein shall require EDIC to indemnify the BRA, its officers or employees for any claim or liability resulting from the wrongful, willful or intentional acts of the BRA, its officers or employees. Nothing in this Agreement shall be construed to impose any personal liability upon any individual serving as a member of the EDIC or as a member of the board of the BRA. The BRA agrees to maintain and continue to carry in force its current public officials' liability insurance for the term of this Agreement.

ARTICLE V

MISCELLANEOUS PROVISIONS

5.1 Modifications. All modifications to this Agreement shall be pursuant to a vote of the Parties' boards, in writing, signed by the parties hereto.

5.2 Assignment. Neither party's rights or obligations hereunder shall be assigned without the prior written consent of the other party.

5.3 Access to Books and Records. Upon execution of this Agreement EDIC shall deliver to BRA or allow BRA to inspect and

examine all of its fiscal and project records of every kind without limitation.

5.4 Contract Rights of Obligees. Nothing in this Agreement is intended to nor shall be construed to alter or limit the contractual rights of third parties pursuant to and under contracts with EDIC duly authorized and entered into prior to the date hereof.

5.5 Independent Contractors. Nothing contained in this Agreement is intended to be nor shall be construed to create any partnership or joint venture, or any other legal relationship between the Parties except that of independent contracting entities.

5.6 Statutory Powers. All statutory powers of the EDIC not delegated by this Agreement shall be and remain vested in EDIC pursuant to c.1097, and the EDIC shall retain and may exercise all statutory powers necessary or appropriate to carry out and effectuate its purposes under law.

5.7 Entire Agreement. This Agreement contains the entire agreement of the Parties hereto and supersedes all prior agreements, representations and understandings, whether written or otherwise, between the Parties relating to the subject matter hereof.

5.8 Additional Documents. The Parties hereto agree to deliver such other and further agreements, consents, documents or other instruments of conveyance, assignment or transfer and to do such other things and to take such other actions, supplemental or

confirmatory, as may be required in connection with the consummation of the contractual relationship contemplated hereunder for the purpose of evidencing the purposes and intent of the contractual relationship contemplated hereunder.

5.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the day and year first written above.

ECONOMIC DEVELOPMENT AND INDUSTRIAL CORPORATION
OF THE CITY OF BOSTON

By: _____

Title: _____

Approved as to form: _____

General Counsel

BOSTON REDEVELOPMENT AUTHORITY

By: _____

Title: _____

Approved as to form: _____

General Counsel

EXHIBIT A

PROJECT RESPONSIBILITIES

1. Administration and Finance, including without reservation, Human resources, Fiscal Services, Computer Services, Administrative Services, and all other administrative and finance functions and operations of every kind.
2. Operations, including, without reservation, Property Management, Buildings and Grounds, and all other operations functions of every kind.
3. Economic Development, including, without reservation, Boston Industrial Development Finance Authority, Planning and Development, Construction and Engineering, Leasing and Business Assistance, and all other economic development functions of every kind, with the sole exception of Boston Local Development Company.
4. Policy and Staff Operations, including, without reservation, Policy, Research, Program Development, Marketing, Legal and all other policy and staff operations of every kind.
5. Jobs and Community Services, including, without reservation, Program Management, Planning, Boston Resident Jobs Programs, Boston Employment Commission, Boston Technical Center, Placement Services, and all other jobs and community services functions of every kind.

AGREEMENT

TO: BOSTON REDEVELOPMENT AUTHORITY AND
BETWEEN
ECONOMIC DEVELOPMENT AND INDUSTRIAL CORPORATION
AND
FROM: THE BOSTON REDEVELOPMENT AUTHORITY
MAY __, 1993

EXHIBIT B

Listing all reports the Economic Development and Industrial Corporation is required by law or otherwise to prepare.

Description of Report

Date of Report

4185J.16

Doc. #5576
AD, PTED

MEMORANDUM

May 27, 1993

TO: BOSTON REDEVELOPMENT AUTHORITY AND
PAUL L. BARRETT, DIRECTOR

FROM: JOSEPH J. NOONAN, ASSISTANT DIRECTOR
FOR ADMINISTRATION AND FINANCE
KEVIN MORRISON, DEPUTY GENERAL COUNSEL

SUBJECT: MANAGEMENT AGREEMENT BETWEEN THE BRA AND EDIC

In April 29, 1993 the Walsh Commission Report entitled "The Boston Advantage" was formally presented to Mayor Raymond L. Flynn. The Walsh Commission Report concludes that there is a broad consensus within Boston to reshape the real estate development and zoning process, not only by emphasizing predictability and accountability but by structurally changing the organization and the management of the City's ability to preserve and enhance its economic well being.

The Commission's recommendations are designed to cut red tape and to bring predictability and accountability to the process by which the City reviews and approves proposed development. These recommendations are a result of hundreds of discussions, meetings and presentatitons to groups representing neighborhoods, business, institutions, advisory bodies, commissions and governmental agencies.

The specific recommendation calls for the City to re-structure the development agencies of the BRA and EDIC to increase its effectiveness in attracting, supporting, and managing new development investment, to clarify roles, and to reduce duplication.

The attached Management Agreement was approved by the EDIC Board on May 19, 1993. Under this agreement the BRA shall take all actions necessary to manage all projects related to EDIC in the areas of Administration and Finance, Operations, Economic Development, Policy and Staff Operations and Jobs and Community Services.

In response to the broad consensus across the city and with the support of Mayor Raymond L. Flynn, it is recommended, therefore, that the Boston Redevelopment Authority adopt the recommendations of the Walsh Commission and further authorize the Director to execute and deliver the Management Agreement with EDIC as contemplated herein.

An appropriate vote follows:

VOTED: That the Chairman be, and hereby is, authorized to enter into, execute and deliver, on behalf of and in the name of the Boston Redevelopment Authority (the "BRA"), a certain "Management Agreement", by and between the Economic Development and Industrial Corporation of Boston ("EDIC") and the BRA, in substantially the form as presented which represents the agreement as previously approved by the EDIC on May 19, 1993, with such changes as the Chairman may deem to be in the best interests of the BRA. The execution and deliver of the "Management Agreement", in as many counterparts as the Chairman shall so determine, shall constitute conclusive evidence of any such changes and a further vote to ratify, approve or confirm the changes shall not be required.

